

¶2 A jury found Haney guilty of aggravated driving under the influence of an intoxicant while his driver's license was suspended. After finding he had two historical prior felony convictions, the trial court sentenced him to an enhanced, mitigated, eight-year prison term. This court affirmed his conviction and sentence on appeal. *State v. Haney*, No. 2 CA-CR 2004-0226 (memorandum decision filed Aug. 29, 2005).

¶3 Haney initiated the current proceeding in November 2007 by filing a motion, ostensibly pursuant to Rule 32.1(c) and (d), Ariz. R. Crim. P., for an order instructing ADOC "to correct its unlawful calculations as to the term of community supervision" Haney will be required to serve following his release from prison. In its minute entry denying the motion as premature, the court stated:

H[aney] claims that the Department of Corrections has miscalculated his term of community supervision that will begin on August 12, 2010. Haney cites no action which has been taken by the Department so far. In fact his Exhibit "A[]" states in part, "The tentative release dates listed below are only a projection . . . [.]". Should he be placed on community supervision he may have legal remedies under Rule 32, but this court is unable to issue advisory opinions.

Haney then filed a motion for reconsideration, which the court denied in a minute entry filed on January 31, 2008. Haney challenges both rulings in the present petition for review.

¶4 We will not disturb an order granting or denying post-conviction relief unless the court has plainly abused its discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). Because Haney's claim does not fall within the purview of either Rule 32.1(c) or (d), we cannot say the trial court abused its discretion by denying Haney's motions.

¶5 Rule 32.1(c) establishes a ground for post-conviction relief when “[t]he sentence imposed . . . is . . . not in accordance with the sentence authorized by law.” Pursuant to A.R.S. § 13-603(I), whenever a defendant is sentenced to a term of imprisonment for a felony conviction, the trial court must also impose at the time of sentencing “a term of community supervision . . . for a period equal to one day for every seven days of the sentence or sentences imposed.”

¶6 The court in this case did impose community supervision as part of Haney’s sentence. The minute entry states, “SENTENCE: Eight (8) years with consecutive community supervision pursuant to A.R.S. § 13-603(I).” Although the court did not take the further step of quantifying Haney’s community supervision term by performing the simple mathematical calculation dictated by § 13-603(I), we are aware of no authority requiring the court to do so.¹ We therefore cannot say that the “sentence imposed . . . is . . . not in accordance with the sentence authorized by law.” Consequently, Haney did not present a colorable claim for relief under Rule 32.1(c).

¹Haney is mistaken that the length of his community supervision term cannot yet be determined because the date of his eventual release is unknown. Nothing in the applicable statutes suggests that the duration of a period of community supervision is affected by earned release credits. Section 41-1604.07(B), A.R.S., provides, “Release credits earned by a prisoner pursuant to subsection A of [§ 41-1604.07] shall not reduce the term of imprisonment imposed by the court” Because a term of community supervision is calculated based on the sentence imposed, § 13-603(I), and “the term of imprisonment imposed” is unaffected by earned release credits, § 41-1604.07(B), the *length* of a required term of community supervision is calculable at the time of sentencing. Only the date of its commencement is uncertain as potentially dependent upon the defendant’s earned release credits. *See* § 41-1604.07(D) (“A prisoner who has reached the prisoner’s earned release date or sentence expiration date shall be released to begin the prisoner’s term of community supervision imposed by the court”).

¶7 Rule 32.1(d) provides an avenue for relief when a “person is being held in custody after the sentence imposed has expired.” Plainly, Haney has no current claim cognizable under this subsection: his prison sentence has not expired, and his period of community service has yet to begin. Hence the trial court noted in its original ruling: “Should [Haney] be placed on community supervision he may have legal remedies under Rule 32, but this court is unable to issue advisory opinions.”

¶8 We cannot say the trial court clearly abused its discretion in finding Haney’s claim premature. If ADOC has indeed miscalculated the length of his period of required community supervision, ADOC could still recalculate and rectify its error before Haney is ever released to begin serving that term sometime in 2010. As the trial court observed, Haney has cited no action taken by ADOC that would give rise to a currently actionable post-conviction claim.

¶9 Because we cannot say the trial court abused its discretion in denying Haney’s motions, *see Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d at 67, we grant the petition for review but deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge